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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,695	09/25/2003	Wayne A. Jensen	DI-9-1	8741
26949 7590 01/11/2007 HESKA CORPORATION INTELLECTUAL PROPERTY DEPT. 3760 ROCKY MOUNTAIN AVE LOVELAND, CO 80538			EXAMINER HUMPHREY, LOUISE WANG ZHIYING	
			ART UNIT	PAPER NUMBER
			1648	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/11/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/670,695	Applicant(s) JENSEN ET AL.	
	Examiner Louise Humphrey, Ph.D.	Art Unit 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 108-146 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 108-146 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the amendment filed 25 October 2006.

Claims 40-54, 58-60, 62-71, 75 and 82-107 have been canceled. New claims 108-146 have been added and are pending.

The objection to the specification is **withdrawn** in view of the Applicant's amendment.

The rejection of claims 40, 65-68, 83, 84, 87, 88, 93-96, and 102-105 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement is **withdrawn** in view of the claim cancellation and amendment.

The rejection of claims 40-54, 60, 69-71, 75, 90, 91, 97-100, 106, and 107 under 35 U.S.C. §103 (a) as being obvious over Hofmann-Lehmann *et al.* (1996) in view of Prud'homme *et al.* (1997) is **withdrawn** in view of the claim cancellation.

The rejection of claims 40-54, 60, 63-71, 75, 83, 84, 87, 88, and 90-107 under 35 U.S.C. §103 (a) as being obvious over Hofmann-Lehmann *et al.* (1996) in view of Prud'homme *et al.* (1997) and Maeda *et al.* (1997) is **withdrawn in part** for the canceled claims **but extended** to new claims 108-146. Applicants' arguments have been fully considered but are not persuasive.

Applicants argue that Hoffmann-Lehmann *et al.* measure anti-herpesvirus antibody levels in free-ranging lions, but do not teach or suggest whether such animals need to be vaccinated based on the levels observed. Similarly, Prud' homme *et al.* measure the levels of antibodies to pseudorabiesvirus gp50 in pigs but provide no teaching or suggestion to use the results to determine whether such animals require vaccination. Applicants further argue that the cited prior art reference fails to disclose the obtainment of a sample from an animal previously vaccinated against herpesvirus. Applicants finally argue that the sequence of Maeda *et al.* misaligns with SEQ ID NO: 18 or 20 by one amino acid, from glycine in Maeda *et al.* to valine in the claimed invention.

The allegedly undisclosed limitations are not given weight as they are intended use for an old method. A recitation of the intended use of the claimed invention must result in a technical difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art method is capable of performing the intended use, then it meets the claim limitations, regardless of which kind of animal the sample is obtained from or however the results can be interpreted.

Examiner appreciates the Exhibit A provided by the Applicants to distinguish the Maeda sequence from SEQ ID NO: 18 and 20. Nevertheless, the invention is *prima facie* obvious, since the minor change in chemical configuration or design of molecule discovered or made by applicants is *de minimis*, since there is no evidence that the change from valine to glycine of epitope is essential for immunogenic activity, and since

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applicants have not explained practical advantages of any differences in the structure between claimed sequence and prior art. See *Ex Parte Anderson* 30 USPQ2d 1866 (Bd. Pat. App. & Int. 1993).

Therefore, claims 108-146 are obvious over Hofmann-Lehmann *et al.* (1996) in view of Prud'homme *et al.* (1997) and Maeda *et al.* (1997).

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

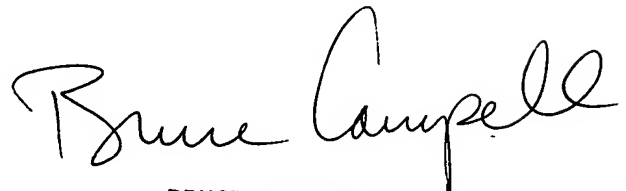
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louise Humphrey, Ph.D. whose telephone number is 571-272-5543. The examiner can normally be reached on Mon-Fri, 9:30 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached at 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Louise Humphrey, Ph.D.
Assistant Examiner
07 January 2007



BRUCE R. CAMPPELL, PH.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600